

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC, et al,	)	
	)	
Plaintiffs and	)	
Counterclaim Defendants	)	
	)	
-VS-	)	CA No. 07-12157-PBS
	)	Pages 1 - 95
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY ONE

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 18, 2011, 9:00 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617) 345-6787

1 We've sold over 120,000 licenses, and I think we have currently  
2 over 50,000 licenses that remain active.

3 And so what happened? Why are we here, and what will  
4 the evidence show? Mr. Zeldin and Mr. Perlov, two apparently  
5 very smart men with advanced degrees from various universities  
6 here and abroad -- I believe they're engineers -- they'd worked  
7 at various jobs, and they'll testify about them, and sometime  
8 back in 1999 they saw our product. And I'm not sure where they  
9 saw it, and I'm not sure if they saw it or one of their friends  
10 saw it and sent it to them, but I'll ask them where they first  
11 saw it. And they started a company called Real View in 1999,  
12 and I believe that Mr. Zeldin and Mr. Perlov are the primary  
13 shareholders of that company. They may be the only ones, I  
14 don't know, but I will ask them.

15 At first, they tried to develop their own products.  
16 They've told us that they had at least three products that they  
17 worked on. One was called E-Design, one was called  
18 E-Decorative Studios, and one was called 3D Furniture World.  
19 But they found it challenging. They found it difficult. They  
20 had no success. They could not establish a market for their  
21 products, and each of those products failed.

22 So sometime in 2003 or 2004 they decided they wanted  
23 to get themselves into the kitchen design business and they  
24 wanted to compete with us. They could have chosen, the  
25 evidence will show you they could have chosen to compete

1 this lawsuit is. So, for example, the catalogs. Well, you're  
2 going to hear about catalogs until it comes out of your ears in  
3 this case because that's where all the money is in this  
4 business. That's where all the effort and work is, it's in the  
5 catalogs. And 20-20, if a cabinet company wants its catalogs,  
6 its components, its parts, its cabinets to be in the 20-20  
7 software, they have to pay 20-20 up to \$100,000 for that right,  
8 that privilege. So that when the kitchen designers are sitting  
9 there selling their kitchens to folks, those cabinets are in  
10 the software, and those cabinets can be sold.

11 Well, Real View is providing that to the cabinet  
12 companies for free. They send the catalogs to Ukraine where at  
13 much lower cost than if they used high-cost U.S. developers,  
14 the catalogs are put into the software; and they've challenged  
15 20-20 with respect to this very, very important part of the  
16 kitchen design software market, the catalogs. Is it wrong to  
17 offer free catalog development to the catalog companies rather  
18 than make them pay \$100,000 to 20-20? 20-20 says it's unfair.

19 Another thing that 20-20 told you about is what are  
20 called trade-ins, okay. So Real View says, "If you're using  
21 another professional kitchen design program, send us the  
22 agreement, the contract for that, and we'll give you either a  
23 very low discount or even a free copy of our software." This  
24 is called trying to get a foot in the market, trying to get a  
25 toehold in the market when one company, 20-20, dominates the

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC,	)	
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Plaintiff and	)	
Counterclaim Defendant	)	
	)	
-VS-	)	CA No. 07-12157-PBS
	)	Pages 3-1 - 3-126
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY THREE

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 20, 2011, 9:42 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 A. No, not the user interface, no.

2 Q. Do you have a business relationship with Real View or  
3 ProKitchen?

4 A. I do not.

5 Q. Have you seen ProKitchen before?

6 A. I have.

7 Q. And when was the first time you saw ProKitchen?

8 A. It would go back a couple years. 2007, 2008 was the first  
9 time I was made of aware of it, but I probably didn't see it in  
10 person for a few months after that.

11 Q. And where did you first see it?

12 A. I first saw it with a dealer. I was actually made of  
13 aware of it by some folks out in the field telling me that  
14 there was a 20-20, for lack of a better term, "knock-off" out  
15 there, and asking me what I knew about it and whether it was  
16 actually related to us.

17 Q. And when you first saw ProKitchen, what was your initial  
18 reaction?

19 A. I was amazed at just how similar it was to the 20-20 in  
20 both the appearance and the functionality of doing things like  
21 laying walls out and adding items to it.

22 Q. And what did you do after you first saw ProKitchen?

23 A. Reported it to 20-20's management team.

24 Q. And have you also had a chance to operate ProKitchen?

25 A. I have. I've been provided a copy of it for court.

IN THE UNITED STATES DISTRICT COURT  
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REAL VIEW, LLC,	)	
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Plaintiff and	)	
Counterclaim Defendant	)	
	)	
-VS-	)	CA No. 07-12157-PBS
	)	Pages 4-1 - 4-122
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY FOUR

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 24, 2011, 9:00 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 A. I can do e-mails and I can do 20-20. I'm not computer  
2 savvy.

3 Q. And why have you continued to use 20-20 for the past  
4 twelve years?

5 A. It's just the best out there. I'm used to it, and I like  
6 the way it works.

7 THE COURT: You have to pick up your voice so we can  
8 all hear, okay?

9 Q. And you mentioned that you've also had a chance to use  
10 ProKitchen. When did you first hear of ProKitchen software?

11 A. About two years ago, almost three, I saw it at KBIS, which  
12 is the Kitchen and Bath Industry Show. I saw it in Chicago.

13 Q. Was that in 2008 or so?

14 A. No. 2009.

15 Q. And did you ever consider using ProKitchen?

16 A. Not at the time that I saw it. It wasn't until the  
17 beginning of '09 that I went to work for a new customer, a new  
18 employer. They had no software, and I knew that ProKitchen was  
19 less money, and so I had to present to my employer, "There are  
20 two out there that I know of. I'm proficient with 20-20, but  
21 because of the cost, let's look at ProKitchen." So I called  
22 them.

23 Q. So you mentioned that you work for yourself for a company  
24 called Danneman Designs. Prior to you doing that, where did  
25 you work?



1 A. Allatoona Kitchen & Bath. I was their senior kitchen and  
2 bath designer.

3 Q. And where is Allatoona Kitchen & Bath located?

4 A. It's just north of Atlanta in Acworth, Georgia.

5 Q. And when you just said that you were working at an  
6 employer and considering purchasing kitchen design software,  
7 was it while you were working at Allatoona Kitchen & Bath?

8 A. Yes. They didn't sell cabinetry until I came there.

9 Q. So I believe you said that when you were considering the  
10 purchase, you called ProKitchen?

11 A. Yes, I did.

12 Q. And who did you speak with?

13 A. A fellow by the name of Chris Midgley.

14 Q. And was he a ProKitchen salesperson?

15 A. Yes.

16 Q. And what did you discuss with him?

17 A. The cost and how it worked and what were the terms. He  
18 offered to send me via e-mail a temporary trial download that I  
19 could try.

20 Q. And approximately how many times did you speak with  
21 Mr. Midgley?

22 A. Oh, gosh. You see, I didn't try it when he first sent it.  
23 I was very busy. And he called and said, "Have you tried it?"  
24 And I said, "I haven't had time." I said, "It's timed out."  
25 So he'd send me another one. I was finally on the third one.

1 I was very frustrated, and I -- and he said, "Well, just try  
2 it," you know. And I said, "I don't have time to read a  
3 tutorial to start something all over again." And he said,  
4 "Just open it up and try it. You'll recognize that it looks  
5 like 20-20, and you'll be able to function right through it,"  
6 and I did.

7 Q. And did he send you a new trial version?

8 A. Yes, he did.

9 Q. And did you open it and load it?

10 A. Yes, I did.

11 Q. And what did you observe about the look of the program?

12 A. Well, he was right, it did look like 20-20. I was  
13 actually able without any tutorial to put my lines in and start  
14 placing cabinets, downloaded a catalog. I did a lot of  
15 complicated things without any tutorial.

16 Q. Did Mr. Midgley say anything else about the 20-20 product  
17 as compared with ProKitchen?

18 A. Well, we mentioned that it was less expensive, quite a  
19 bit, and that it was easier to use, and also that it wouldn't  
20 crash like 20-20 does.

21 Q. Did you understand what he meant by that?

22 A. Yes. If you overtax 20-20, it will crash. I mean, it  
23 will just freeze, and you'll lose your design.

24 Q. And did he tell you what the price was for ProKitchen?

25 A. Yes.

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	)	
Plaintiff and	)	
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-VS-	)	CA No. 07-12157-PBS
	)	Pages 5-1 - 5-111
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY FIVE

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 25, 2011, 9:00 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 video tutorials that you created?

2 A. Yes, it was.

3 Q. When did you first hear about ProKitchen?

4 A. In 2007.

5 Q. Can you tell me how you first heard about it.

6 A. I received a phone call from a manufacturer who was asking  
7 me if his 20-20 catalog that he has would work on ProKitchen.

8 Q. Did he say whose program ProKitchen was?

9 A. He assumed it was ours.

10 Q. And what did you do?

11 A. I told him I'd check it out; you know, there was a  
12 possibility that we were branding it for a specific market  
13 segment. So I called sales because I was in product management  
14 at that time. I asked if they were branding this or talking to  
15 anyone about using it in a different context. No one knew what  
16 I was talking about. So I called the customer back and said  
17 that it wasn't. Then I did some research on what he was  
18 talking about.

19 Q. So the person who called you believed that the ProKitchen  
20 software was a 20-20 product?

21 A. It was his understanding that it was a light version of  
22 20-20 Design, and that's why he was asking if his existing  
23 catalog would work on it.

24 Q. So did you actually end up seeing ProKitchen at some  
25 point?

1 confusion, which may get you over a directed verdict on it --  
2 it likely does -- but I'm just having trouble. It just will be  
3 very complicated.

4 And the next issue is, on intentional interference,  
5 are there going to be separate damages set across for these  
6 twelve, you know, whatever customers you've specifically  
7 identified?

8 MR. BLANK: Mr. Hoffman is not going to testify on  
9 that.

10 THE COURT: So how will I do that? I can't just say  
11 everybody was because a fair number of them -- I mean, really,  
12 the primary thrust of what most people are saying is, they were  
13 getting killed by a knockoff product that was cheaper, not that  
14 it was confusion. Even this Georgia lady wasn't confused. She  
15 said it was a cheaper price, so --

16 MR. BLANK: She called it ProKitchen.

17 THE COURT: Right, but she wasn't confused. She just  
18 said it was a cheaper price. So I'm trying to figure out  
19 how -- are there dollar numbers that come in for the specific  
20 customers you say were interfered with?

21 MR. BLANK: We don't plan to do that.

22 THE COURT: So if they only came back with intentional  
23 interference and not copyright and not consumer confusion,  
24 there's no way for them to divvy out the numbers for  
25 specifically which customers were wooed away?

1 MR. BLANK: Well, this testimony identifies and  
2 there's additional exhibits which identify customers that were  
3 lost to ProKitchen.

4 THE COURT: Yes, absolutely, but I'm just saying, is  
5 there a damage number that comes with it somewhere?

6 MR. BLANK: Well, I think the damages -- well, I think  
7 the jury can assess them. I don't have an expert.

8 THE COURT: No, you can't. You can't guess. So I'm  
9 just trying to figure this out right now.

10 MR. GESMER: I know this doesn't deal with exactly  
11 what you're saying, but we're going to file a motion for a  
12 judgment as a matter of law on the trade dress, the intentional  
13 interference.

14 THE COURT: I don't know, I mean, I've been listening  
15 with those in mind. At this point I think I understand the  
16 copyright case to the limits that this complicated area of the  
17 law permits. I mean, I sort of know where the gray areas are,  
18 no pun intended, since gray is a big issue here. But on the  
19 trade dress, intentional interference issues, intentional  
20 interference is simple to instruct on. That's well known and  
21 that's simple. And the trade dress is just, as we've been  
22 looking at the ABA model instructions and other cases, it just  
23 turns out to be a hard area to instruct on.

24 MR. GESMER: One issue is, under the statute, where  
25 it's a nonregistered trade dress, they have a burden of proving

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	)	Pages 6-1 - 6-82
20-20 DESIGN, INC., et al,	)	
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Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY SIX

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 26, 2011, 8:55 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 categories that are in the financial statements. We don't  
2 really have detailed business records for those, but I have  
3 assumed that those are necessary things in order to make the  
4 sale. You certainly have to pay the sales commission. You've  
5 got to do product support if you're going to collect revenues  
6 for support and services and so forth. So that leaves me when  
7 I deduct those with total profit of about \$772,000.

8 Now, the company took that profit and plowed virtually all  
9 of it back into the business, and we'll see that, but the  
10 unjust enrichment I've calculated is fundamentally the  
11 \$772,000; and that of course assumes that the company's  
12 revenues were only what's shown here, and, again, more than  
13 half the licenses aren't shown.

14 Q. Now, Mr. Hoffman, so I see you've deducted sales  
15 commissions, product support, and product sale costs reported  
16 to us by Real View. What about other costs incurred by  
17 Real View, such as dues and office supplies and subscriptions  
18 and the like?

19 A. Well, those things, at least in my view, are not directly  
20 related in making the sale, things like recruiting expenses,  
21 legal fees, a whole host of things. The company plowed it back  
22 in. There's also substantial expenses being the transfer to  
23 what appears to be the Ukraine, to the Ukrainian subsidiary.  
24 We don't know what happens to that afterwards, but clearly  
25 making transfers to the Ukraine would not appear to be an



1 Undoubtedly they would have. Did the price decrease help?

2 Sure it did. Did I separate the two? We don't have the data  
3 to separate it, so I've left it all out. I've assumed zero in  
4 that period rather than try to get into the statistical  
5 analysis that's undoable.

6 Q. Okay, so your total lost profits from price erosion then  
7 are what?

8 A. \$1,995,828, at least, plus everything else that could have  
9 been done since the price drop.

10 Q. Okay, and then your total damages -- well, I'll go back to  
11 it in a sec. And did you include any damages to 20-20's sales  
12 or price erosion for any period before 2009?

13 A. No, and if you go back to the -- I don't know if you can  
14 go back to the earlier chart. There we go. No, there is no  
15 price erosion during this entire period, absolutely nothing,  
16 even though 20-20's sales are coming down, you know, it's at  
17 least alleged that in part that's because Real View is on the  
18 market, but there's no damages to 20-20 in my calculations  
19 during that entire period at all.

20 Q. All right. And does 20-20 continue to incur lost profits  
21 from price erosion?

22 A. Yes, because if prices have been reduced and it continues  
23 to sell at the reduced price, I'm sure if it could increase its  
24 price it would. We heard Ms. Boucher testify that they've  
25 raised prices in the past, and that's always a good thing to do

1 if you want to make more money. But they certainly have not  
2 been able to do that to date, and so they continue to lose  
3 money as we sit here today as a result.

4 Q. And so how much are the total damages from the alleged  
5 wrongful acts of Real View?

6 A. The total comes to \$2,768,809, and, again, that's at  
7 least, because we've got serious issues with the unjust  
8 enrichment, financial statements not being right, and with the  
9 price erosion, we've left a lot out.

10 Q. Mr. Hoffman, just a final --

11 THE COURT: What's the start period for that, just to  
12 make that clear?

13 THE WITNESS: The beginning period would be about  
14 February of '06 when the first license sale was made.

15 Q. Mr. Hoffman, is there any overlap or double counting when  
16 you add the amount of unjust enrichment to the amount of price  
17 erosion?

18 A. No. The unjust enrichment reflects transactions that  
19 Real View made, sales that they made. The price erosion  
20 reflects sales that 20-20 made, so that there's no one  
21 transaction that's in both piles. Either one company made it  
22 or the other, so there should be no overlap and no double  
23 counting here at all.

24 MR. BLANK: I have no further questions, your Honor.

25 THE COURT: Thank you.

1 A. Right, then 294 and then 247.

2 Q. I want to just try a little bit of arithmetic with you so  
3 we can understand exactly what happened to 20-20's revenues as  
4 a result of this, and I won't go past those three quarters to  
5 keep it simple.

6 MR. GESMER: Please switch back to the ELMO now. I  
7 may ask you to go back and forth.

8 THE WITNESS: I think we have a question.

9 THE COURT: Oh, you have a question. Yes, all right.

10 A JUROR: I don't know if you can switch back to that,  
11 but I was going to say --

12 THE COURT: Could you get us back to that other  
13 document?

14 A JUROR: We were following along on that document --

15 THE COURT: Well, can we get back on that document so  
16 he can point to what his issue is?

17 A JUROR: It wasn't actually. I was asking to switch  
18 back to the one on the machine rather than the computer screen  
19 version because it was a little bit bigger, and I know one of  
20 us today is having some issues seeing very small numbers on the  
21 screen.

22 A JUROR: Because he left his glasses home.

23 (Laughter.)

24 THE COURT: Been there, done that. So let me just --

25 Q. Okay, so we'll go back to the ELMO, and as I was saying --

1 THE COURT: I'm trying to figure out, isn't there a  
2 way of even zooming it in even closer? There is. There's  
3 something that says zoom?

4 MR. GESMER: Yes, I can, your Honor. The more I zoom,  
5 the less you see of the page, but I can zoom quite a bit.

6 THE COURT: Okay.

7 MR. GESMER: Okay?

8 Q. So just to go back to this, in the three quarters before  
9 the price cut, the average sales per quarter was 166?

10 A. That's correct.

11 Q. Then in the three quarters after the price cut, the unit  
12 sales were 510, then 292, then 282?

13 A. That's correct.

14 Q. All right. So, now, let me try this and see if we can all  
15 understand exactly what happened. In the three quarters before  
16 the price cut, so I'll say three quarters -- I apologize for my  
17 handwriting, it is terrible -- the three quarters times 166  
18 units per quarter --

19 THE COURT: What is that thing on the left?

20 (Laughter.)

21 MR. GESMER: I apologize, your Honor. I have very,  
22 very poor handwriting, and I'm stuck with it, and I'm very  
23 sorry. I will translate. My daughter never ceases to enjoy  
24 making fun of my handwriting. It's one of her great joys in  
25 life.

1 THE COURT: I see where I can now make it out.

2 Q. So it says three quarters times 166 units per quarter,  
3 times \$4,195 per sale -- and I did the arithmetic before I  
4 stood up here -- equals \$2,089,000, and I rounded the last  
5 three zeros, but approximately \$2,089,000 in sales. Does that  
6 thus far appear to be correct arithmetic, Mr. Hoffman? The  
7 three preceding quarters times 166 per quarter --

8 THE COURT: Well, we'll take your word for it.

9 A. Yeah, okay, I'll check it, and I don't have a calculator.

10 Q. Okay, take my word for it, taking my word for it --

11 A. I'll check it.

12 Q. -- for now --

13 THE COURT: Take his word for it.

14 Q. Then in the three following quarters, the three quarters  
15 following the price cut, we have sales of 510, 292, and 282.  
16 So in those three quarters, we have total sales of 1,084 units.  
17 Taking my word for the arithmetic, have I -- well, you  
18 understand I've added up the three quarters after the price  
19 cut, the unit sales in those three quarters, correct?

20 A. Yeah, okay, I think you have.

21 THE COURT: Units sold during that spike, is that  
22 right?

23 MR. GESMER: During the three quarters following the  
24 price cut.

25 THE COURT: The spike in sales.

1 MR. GESMER: The spike and then the leveling off.

2 Q. Then if we multiply the 1,084 units times the sale price,  
3 \$1,995 per unit, the product is \$2,162,500. I'll ask you to  
4 take my word on that arithmetic, but it was calculated by a  
5 computer, so it must be right.

6 A. Well, it appears to be wrong and radically wrong. I'm  
7 looking up above at your four times 166, and four times 16 is  
8 64. I don't know how you get the first digit to be a 2.

9 Q. I'm sorry, Mr. Hoffman, please say that again.

10 A. Well, as I understand what you've done, you've taken the  
11 166 units --

12 Q. 184.

13 A. You have 166 units times \$4,000 apiece to get to  
14 \$2 million. Is that what you did?

15 THE COURT: Times three.

16 THE WITNESS: Times three. Okay, that will get you  
17 there. Good.

18 Q. Okay. Lawyers go to law school to avoid math, so I'm on  
19 very thin ice here, and I hope I didn't make a mistake. And  
20 then the bottom part shows what actual revenue 20-20 -- what  
21 actual money came in in the three quarters following the price  
22 cut, correct?

23 A. That's correct.

24 Q. All right, now, what you have done is, you have said:  
25 Let's take the 166 units per quarter, and let's charge

1 Real View the dollar amount of the price cut; that is, the  
2 number of sales during that period of time times the  
3 approximately \$2,000 price cut. But why have you not also  
4 added back in the profit that 20-20 made as a result of the  
5 price cut and as a result of the spike in unit prices?

6 A. Well, again, it's because we cannot decouple -- you're  
7 talking about units above the line, that they sold 510 units in  
8 the first quarter, for example; some of that because of the  
9 price cut, some of it because of seasonality -- the second  
10 quarter is always higher -- some of it because the trade show  
11 happens then, some of it because there's pent-up demand, some  
12 of it because they've improved the software, some of it because  
13 they've done other marketing things, a whole lot of things  
14 going on there. Some of it, the economy is beginning to get a  
15 little bit better. And we can't break out the impact of the  
16 price cut from all those other things.

17 What we can see is that as a result of dropping prices and  
18 doing all those other things and having the economy get a  
19 little better, the company was able to hold its own on revenue,  
20 okay? That's it. But the first 166 units, no question, could  
21 have sold them for \$4,200 apiece. They didn't sell them for  
22 \$4,200 apiece; sold them for \$2,000. They lost money on those.  
23 And then we could talk about how much additional damage is in  
24 the other units, the rest of the 510, for example. But I've  
25 left all that out purposely because the damages would be

1 higher.

2 Q. In your analysis, you've given Real View no benefit of  
3 this You've assumed that Real View must pay the  
4 price for all of the price cut, but Real View gets none of the  
5 benefit of the increased sales and profits, correct?

6 A. No. There's no benefit, no benefit at all from having  
7 dropped the price on those 166 units. You know, Real View did  
8 not do 20-20 a favor by making them drop the price on those.  
9 Now, did they do them a favor on making them drop the price on  
10 the others? I don't think so. You know, the company 20-20  
11 sure didn't want to drop its price, okay?

12 Q. Mr. Hoffman, you've used some pretty fancy terminology in  
13 your testimony, regression analysis and some of that real, you  
14 know, college advanced statistic terms, but isn't it true that  
15 20-20 basically made as much or more in sales in the three  
16 quarters after they dropped their price as they made in the  
17 three quarters before they dropped their price? Isn't that  
18 just a simple, plain fact of arithmetic?

19 A. No. They did a lot of things to hold themselves together,  
20 and they clearly lost money on those 166 units every quarter,  
21 clearly. And they may have damages on the others as well,  
22 okay? But they did not want to drop their price. Nobody did  
23 them any favors or benefits by getting them to drop their  
24 price. All things being equal, you don't cut your price in  
25 half.



1 Q. But 20-20 was holding steady at about 166 units per  
2 quarter in the three quarters, the nine months before it cut  
3 its price, correct?

4 A. That's correct, at \$4,200 a unit.

5 Q. It could have just kept it at that price, and it could  
6 have kept selling 166 units a quarter for \$4,200,  
7 approximately, and life would have gone on, and there would be  
8 no damages that you would be asserting against Real View,  
9 correct?

10 A. Oh, if there had been no price erosion, if they hadn't  
11 been forced to drop the price, you're absolutely right: If  
12 there was no price erosion, there would be no price erosion  
13 damages. But there was price erosion.

14 Q. I'm asking you, they could have just kept selling at that  
15 price just as they had at those three quarters? Nothing  
16 happened during those three quarters that forced them to cut  
17 their price. They were holding steady at 166 units a quarter  
18 for nine months before they cut their price.

19 A. Right, but that was substantially less than what their  
20 sales had been before, and they were faced with a competitor,  
21 who we are assuming should not have been on the market, that  
22 was selling what is asserted to be a virtually identical  
23 product for less than half the price. We saw it was \$1,495.  
24 And so they felt they had to do something by virtue of that  
25 competitor who shouldn't have been there. And that's price

1 erosion.

2 Q. And that assumption that you just expressed is based on  
3 Ms. Boucher's testimony, correct?

4 A. It's based on the testimony of management that that's why  
5 they did it, and it's based on the observation they didn't have  
6 to do it in Europe, and they didn't have to do it with the  
7 other 77 percent of the business.

8 THE COURT: So let me ask you, did you award damages  
9 for those three quarters where there was a spike?

10 THE WITNESS: Only on the first 166 units, not on the  
11 rest of the 510. So if you take the difference between 166 and  
12 the 510, we say, well, some of those additional sales were made  
13 because -- and maybe a lot of them were made because the price  
14 went down, but not all of them. Some of them were made to  
15 people who would have bought it at \$4,200.

16 THE COURT: Just to understand, some of your damage  
17 figure includes the first 166 for the three quarters where  
18 there was a spike?

19 THE WITNESS: Yes. All the way across it's just 166.  
20 So everything above 166 in the spike, no damages at all.

21 Q. And you don't credit Real View at all for those profits  
22 that resulted from the spike?

23 A. I don't credit Real View for having done a favor to  
24 20-20's economics by making them drop the price in half, no.  
25 There is no benefit, to the best of my understanding.

1 52 percent price cut?

2 A. No, because I didn't make the 52 percent price cut, okay.  
3 The management of 20-20 made it. I've simply calculated the  
4 damages that they experienced because of that, and I have  
5 assumed that if they could have kept the prices higher, they  
6 sure would have kept the prices higher. They try to raise  
7 their price whenever they can. They don't try to drop their  
8 price whenever they can. And, yes, I did an in-depth analysis,  
9 and you'll see that at the back of my reports. There's a long  
10 length of all the documents I reviewed, all the testimony I  
11 reviewed. It's in my reports. So I did the analysis. I've  
12 reviewed the documents.

13 MR. GESMER: Your Honor, I'm not going to be able to  
14 conclude Mr. Hoffman today. I see it's --

15 THE COURT: Well, how much longer do you have?

16 MR. GESMER: Maybe ten or fifteen minutes.

17 THE COURT: Well, go for it.

18 MR. GESMER: All right.

19 THE COURT: Well, let me ask this. Mr. Alba points  
20 out, will there be much redirect? I'm just worried we're going  
21 to lose tomorrow as a court day, so I'm just sort of thinking  
22 we should finish this witness if we can possibly do it. So  
23 will you have much on redirect?

24 MR. BLANK: So far, no.

25 THE COURT: So I'll go till 1:15, and then hopefully

1           So what would you do? If you were to say, well, they  
2   lost X on the amount of the price drop but they gained X on the  
3   amount of the additional sales, it looked roughly as if to  
4   negative out the problem in those three months anyway.

5           MR. BLANK: But if the only thing that happened was  
6   the price drop, it would be different, but there were other  
7   things happening at the time.

8           THE COURT: Maybe, but don't forget, 20-20 is a  
9   monopolist. I mean, when all is said and done, they have 85 to  
10   90 percent of the market share. Under any definition of  
11   monopoly, they had it. So it just could -- I don't know, is it  
12   true that 90 percent of their price came in -- 90 percent was  
13   profit? I mean, usually it's 10 percent is profit.

14          MR. BLANK: No. I mean, and we're not talking  
15   about -- we're talking about the -- when you drop the price  
16   from \$4,200 to \$2,000 --

17          THE COURT: It's going to be a spike in sales. It's  
18   Economics 101 from college. I mean, sure, the price goes down,  
19   the sales go up. I mean, that's just --

20          MR. BLANK: But the profit -- I mean, it doesn't cost  
21   you any less, except for the sales commission, it doesn't cost  
22   you any less to sell the product. You're not slashing people's  
23   salaries at the same time. You're not --

24          THE COURT: You took Ec 1, didn't you, wherever you  
25   went to college? When the price goes down, right --

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC,	)	
	)	
Plaintiff and	)	
Counterclaim Defendant	)	
	)	
-VS-	)	CA No. 07-12157-PBS
	)	Pages 7-1 - 7-135
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY SEVEN

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 28, 2011, 9:12 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 (Defendant Exhibit 336 received in evidence.)

2 Q. How do you typically sell ProKitchen?

3 A. On a day-to-day basis, it is sold via Internet and  
4 telephone marketing.

5 Q. And how many phone calls do you typically make before a  
6 customer purchases ProKitchen?

7 A. Typically you're looking at, you know, ten to twelve. It  
8 could go up to as many as twenty.

9 Q. And over what period of time?

10 A. Two months to, you know, three months sometimes, you know,  
11 you work with clients.

12 Q. Do you offer a free trial of ProKitchen?

13 A. To everyone, yes. Yes, ma'am.

14 Q. And how often does a customer use the free trial before  
15 they decide to purchase?

16 MR. BLANK: Objection.

17 THE COURT: Overruled.

18 A. Always. Always send out a free trial to my customers.

19 Q. Have you ever had a customer express any confusion to you  
20 about the similarity between ProKitchen and 20-20?

21 A. Not to me, no.

22 Q. Has a customer ever told you that ProKitchen is the same  
23 as 20-20?

24 MR. BLANK: Objection.

25 THE COURT: Overruled. I'll allow that for state of

1 A. Uhm, the -- are you referring to the Showroom graphics?

2 Q. Yes.

3 A. Uhm, if it came out -- because I was using 20-20, you  
4 know, up until 2008? Does that help?

5 Q. Well, I don't know. I'm just asking you, do you recall  
6 one way or the other?

7 A. I never bought the Showroom modular for my 20-20, so I did  
8 not use the Showroom module. The graphics I'm referring to is  
9 the graphics within the program itself.

10 Q. And did the 20-20 Design program that you used have  
11 graphics?

12 A. Yes, it did have graphics.

13 MR. BLANK: Nothing further.

14 THE COURT: Okay, thank you very much. I hope you  
15 enjoyed the snow. You don't get much of it from where you're  
16 from, huh?

17 THE WITNESS: No, I do not.

18 THE COURT: We don't get this much here usually  
19 either.

20 (Witness excused.)

21 THE COURT: Your next witness.

22 MR. GESMER: Yes, your Honor, I'd like to read two  
23 exhibits into evidence, and I'd like to show them to the jury  
24 on the ELMO as well.

25 THE COURT: Sure.

1 MR. GESMER: This will be 20-20 Exhibit 101 and  
2 ProKitchen Exhibit 338.

3 This is Plaintiff Exhibit or 20-20 Exhibit 101. I'll  
4 read from it now: "Inertia is a powerful force in all human  
5 affairs, but more so in software than most -- once a software  
6 company establishes a market, its users are reluctant to switch  
7 to a new program if it requires 'relearning' the user  
8 interface. Real View knew that to succeed it would have to  
9 convert users of 20-20 Design to its product. Therefore, it  
10 made ProKitchen as close to 20-20 Design as possible."

11 Now I'd like to read from Real View Exhibit 338. This  
12 is the first page with the caption of that document, "Pretrial  
13 Memorandum."

14 "20-20 is, as it proudly asserts, the world's leading  
15 provider of CAD software for the design industry. Real View is  
16 the start-up new-comer. Inertia is a powerful force in all  
17 human affairs, but more so in software than most -- once a  
18 software company establishes a market, its users are reluctant  
19 to switch to a new program if it requires 'relearning' the user  
20 interface. Real View knew that to succeed it would have to  
21 convert users of 20-20 Design to its product. Therefore, it  
22 made ProKitchen as close to 20-20 Design as possible, in order  
23 to make the transition as easy as possible for those 20-20  
24 users who were open to converting to a program that (Real View  
25 asserts) was faster, more stable, had superior features, and



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC,	)	
	)	
Plaintiff and	)	
Counterclaim Defendant	)	
	)	
-VS-	)	CA No. 07-12157-PBS
	)	Pages 8-1 - 8-143
20-20 DESIGN, INC., et al,	)	
	)	
Defendants and	)	
Counterclaim Plaintiffs	)	

JURY TRIAL - DAY EIGHT

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
January 31, 2011, 9:15 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

1 thought it was a valid point to show that this is so common  
2 that it's kind of beyond any -- should be beyond any  
3 consideration.

4 Q. Mr. Zeldin, you've heard testimony about 20-20's position  
5 in the market, and you've given testimony about 20-20's  
6 position in the market, correct?

7 A. Yes, I did.

8 Q. And it's your understanding and testimony that 20-20 is  
9 the market leader, correct?

10 A. In the kitchen and bath design, yes, it is the market --  
11 not market leader. It is the market -- dominant market player,  
12 dominant software in the market.

13 Q. And that 20-20 has been in that position for many years,  
14 correct?

15 A. In the United States, yes.

16 Q. And is it your view that just because 20-20 is big or  
17 successful, that you could copy from 20-20?

18 A. My view, that I can copy from anyone. It's my federal  
19 right to copy features, functionalities. It is -- it is --  
20 this position is valid. It was essentially confirmed by the  
21 Supreme Court --

22 THE COURT: No, no. I'll give the legal instructions.

23 A. Okay. But, anyway, if people wouldn't copy, they wouldn't  
24 drive carriage. They --

25 THE COURT: They wouldn't drive what?

1 bought -- I rented --

2 Q. Let's stick with 20-20. You know, you can talk about  
3 other softwares, but let's stick with 20-20. So you sat down  
4 side by side with him. Was it in his house?

5 A. Yes.

6 Q. And did he ever send you an electronic copy of it?

7 A. No.

8 Q. Did you ask him to do that?

9 A. No.

10 Q. And did you select things from 20-20 Design that you  
11 wanted to copy into ProKitchen?

12 A. I would object to the word "copy" here.

13 Q. Why?

14 THE COURT: I didn't hear you.

15 MR. BLANK: He said he would object to the word  
16 "copy."

17 THE COURT: What word would you use?

18 THE WITNESS: I would use to identify some features  
19 which should be included into our software.

20 Q. Now, was this at a time when you also thought it was okay  
21 to copy?

22 A. I think why? I don't think change my mind. I still think  
23 that it's okay to copy it.

24 Q. Okay. So where is that -- so you looked at things that  
25 you liked. You looked at things that you wanted to put into

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3  
4 REAL VIEW, LLC, )  
5 Plaintiff and )  
6 Counterclaim Defendant ) No. 1:07-cv-12157-PBS  
7 vs. )  
8 20-20 DESIGN, INC., ET AL., )  
9 Defendants and )  
10 Counterclaim Plaintiffs )  
11 )

12  
13 BEFORE: THE HONORABLE PATTI B. SARIS

14 JURY TRIAL - DAY TEN

15  
16  
17 John Joseph Moakley United States Courthouse  
18 Courtroom No. 19  
19 One Courthouse Way  
20 Boston, MA 02210  
21 Thursday, February 3, 2010  
22 8:15 a.m.

23 Brenda K. Hancock, RMR, CRR  
24 Official Court Reporter  
25 John Joseph Moakley United States Courthouse  
One Courthouse Way  
Boston, MA 02210  
(617)439-3214

CONFIDENTIAL

1

1 Volume: I Pages: 1-153 Exhibits: A, B

2 UNITED STATES DISTRICT COURT

3 DISTRICT OF MASSACHUSETTS

4 Civil Action No. 07-12157

5 - - - - - x

6 REAL VIEW, LLC,

7 Plaintiff,

8 v.

9 20-20 TECHNOLOGIES, INC.,

10 Defendant.

11 - - - - - x

12 20-20 TECHNOLOGIES, INC.,

13 Counterclaim Plaintiff

14 v.

15 REAL VIEW, LLC,

16 Counterclaim Defendant, and

17 BORIS ZELDIN and LEONID PERLOV,

18 Additional Party Defendants in Counterclaim

19 - - - - - x

20 VIDEOTAPED DEPOSITION OF MANON BOUCHER

21 Friday, January 14, 2011, 12:30 p.m. to 4:06 p.m.

22 DECHERT, INC.

23 200 Clarendon Street, Boston, Massachusetts

24 Reporter: Marianne R. Wharram, CSR/RPR

1 price for the software?

2 A. No.

3 Q. Except I think as you mentioned an  
4 occasional --

5 A. Occasional --

6 MR. GESMER: Objection. Objection,  
7 leading.

8 Q. (BY MR. BLANK) I'm sorry. Okay.

9 A. Yes, occasionally. Every time we went to a  
10 show --

11 Q. I have to place a question. Prior to April  
12 of 2009, when you testified you cut the price by  
13 more than 50 percent, did you -- were there  
14 previous occasions where you had cut the price of  
15 the software?

16 A. Yes.

17 Q. And can you describe those previous  
18 occasions?

19 A. There were show promotions, so we always  
20 offered a discount of around ten percent or \$500.

21 Q. And how long did those promotions last?

22 A. Around a month or two maximum.

23 Q. Now, were you involved in the decision to  
24 lower the price from 4,195 to 1,995?

14:12:03 1 A. Yes, I was.

14:12:04 2 Q. And can you tell me how that decision was  
14:12:06 3 made?

14:12:06 4 A. There was a lot of meetings and  
14:12:10 5 discussions, and we had -- and we came up with --  
14:12:14 6 we had no other options than to cut our prices in  
14:12:17 7 half because ProKitchen was selling the same  
14:12:19 8 software at half the price.

14:12:21 9 Q. So why did you decide to drop the price?

14:12:25 10 A. Because ProKitchen was selling at half the  
14:12:28 11 price and it's the same software.

14:12:30 12 Q. Did -- were there any other reasons you  
14:12:34 13 lowered the price?

14:12:35 14 A. No.

14:12:35 15 Q. And how have you implemented this price  
14:12:39 16 cut?

14:12:40 17 A. We've advertised it at KBIS as a show  
14:12:46 18 discount.

14:12:46 19 Q. And this was for the 2009 spring KBIS show?

14:12:50 20 A. Yes.

14:12:50 21 Q. Now, initially, was it intended to be a  
14:12:58 22 permanent price cut?

14:12:59 23 A. No, no.

14:13:00 24 Q. What was it initially intended to be?

1 with Mr. Smith?

2 A. I don't recall if I did with Mr. Smith.

3 Q. This response reads -- I'm going to read  
4 this in its entirety.

5 MR. BLANK: which response?

6 MR. GESMER: Response number nine, page  
7 11 of 20-20's interrogatory responses to Real View.

8 Q. (BY MR. GESMER) Again, the question was,  
9 identify every incident of consumer confusion of  
10 which you are aware that resulted from Real View's  
11 alleged copying of the 20-20 Design product. And  
12 then the response is, 20-20 objects to this request  
13 based on objections 1 through 5 supra.

14 Notwithstanding and subject to the foregoing  
15 objections, 20-20 states that discovery is still  
16 pending, but for example, 20-20 received a call  
17 from a customer experiencing technical difficulties  
18 with a software product it had purchased, firmly  
19 believing it was 20-20 Design, while in fact, it  
20 had purchased ProKitchen. Did I read that  
21 correctly?

22 A. Yes.

23 Q. Do you know who that customer was?

24 A. It sounds like Nu Face, unless it's another



1 one. There's no name mentioned here.

2 Q. well, are you aware of any other instance  
3 of consumer confusion other than Nu Face?

4 A. Confusion, no.

5 Q. Okay. Now, you can set this aside, please.  
6 Give this back to me. Now, I'm going to ask you to  
7 look at some more exhibits, but I'm hoping that --  
8 well, I think I have copies of them for you. These  
9 are some exhibits that I copied before coming here  
10 today.

11 MR. GESMER: And these are the  
12 exhibits, Tim, that you gave us in the spring that  
13 had the Post-It notes on them, so we put our own  
14 stickers on them.

15 MR. BLANK: That's fine. If you just  
16 tell me what numbers they are --

17 MR. GESMER: I can do that.

18 MR. BLANK: -- I can have them at the  
19 ready.

20 MR. GESMER: I will do that.

21 MR. BLANK: Are they our -- are they  
22 our exhibits?

23 MR. GESMER: Yes, these would be your  
24 exhibits.